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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,403	07/31/2003	Mark Shea	20765.NP	6075
20551 7590 11/13/2007 THORPE NORTH & WESTERN, LLP. 8180 SOUTH 700 EAST, SUITE 350 SANDY, UT 84070			EXAMINER RIVIERE, HEIDI M	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 11/13/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/633,403		SHEA, MARK	
	<b>Examiner</b>		<b>Art Unit</b>	
	Heidi Riviere		3629	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 July 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration..
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3 November 2003</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### Information Disclosure Statement

1. The Information Disclosure Statement filed on **3 November 2003** has been considered. An initialed copy of the Form 1449 is enclosed herewith.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1-7** are rejected under 35 U.S.C. 102(b) as being anticipated by **Linda Trischitta, "Deal to Save Land Sets Precedent"**, Times Union, Aug. 12, 1998, page F.1 (hereinafter "**Trischitta**").

4. **With respect to claims 1 and 6:** Trischitta teaches:

- a) identifying a parcel of real property owned by a first party and suitable for securing a conservation easement wherein the first party is unable to utilize a maximum monetary value generated by the conservation easement; (page 1, paragraph 6 – Hall will sell his right to develop his farmland in exchange for )
- b) selling an interest in the identified parcel of real property to an intermediate party qualified to receive maximum tax deduction benefit for the conservation

easement; (Page 2, paragraph 1 - Drumm will sell his right to develop to Hanehan a farmer who will use the property to grow corn for his cows)

c) processing the conservation easement on the parcel of real property with proper government authorities; (Page 2, paragraphs 2 and 4 – New York State Department of Agriculture and Markets will contribute 75% of the cost) and

d) exchanging at least a portion of the monetary value in the real property with the conservation easement to the intermediate party for consideration less than the maximum monetary value. (Page 2, paragraph 2 – the price for the property would be “the difference between market value that the developers would pay for the land and the farm valuation, which is lower”)

5. **With respect to claim 2:** The Trischitta teaches the step of determining the monetary value of the real property with the conservation easement. (Page 2, paragraph 2 – the price negotiated for the property would be “the difference between market value that the developers would pay for the land and the farm valuation, which is lower”)

6. **With respect to claim 3:** Trischitta teaches determining the monetary value comprises the step of generating a virtual development plan of the real property before granting of the conservation easement be granted. (Page 2, paragraph 1 - Drumm will sell his right to develop to Hanehan a farmer who will use the property to grow corn for his cows)

7. **With respect to claim 4:** Trischitta teaches:

- determining a market value of the real property before granting of the conservation easement; (Page 2, paragraph 2 – the price negotiated for the property would be “the difference between market value that the developers would pay for the land and the farm valuation, which is lower”)
- determining a market value of the real property based on a business plan to develop the real property determining the difference between the market value of the real property before granting the conservation easement and the market value of the real property as developed according to the business plan; (Page 2, paragraph 2 – the price negotiated for the property would be “the difference between market value that the developers would pay for the land and the farm valuation, which is lower”; Page 2, paragraph 1 - Drumm will sell his right to develop to Hanehan a farmer who will use the property to grow corn for his cows)
- and subtracting all costs needed to develop the real property according to the business plan. (Page 2, paragraph 2 – the price negotiated for the property would be “the difference between market value that the developers would pay for the land and the farm valuation, which is lower”; Page 2, paragraph 1 - Drumm will sell his right to develop to Hanehan a farmer who will use the property to grow corn for his cows)

8. **With respect to claim 5:** Trischitta teaches exchanging at least a portion of the monetary value in the real property in the real property with the conservation easement from the intermediate party to a third party for consideration less than the maximum

monetary value. (Page 2, paragraph 2 – the price for the property would be “the difference between market value that the developers would pay for the land and the farm valuation, which is lower”)

9. **With respect to claim 7:** Trischitta teaches:

- a) identifying a parcel of real estate owned by a landowner and suitable for securing a conservation easement wherein the landowner is unable to utilize a maximize tax interest generated by the conservation easement; (page 1, paragraph 6 – Hall will sell his right to develop his farmland in exchange for )
- b) selling an undivided interest in the identified parcel of real estate to an intermediate party; (Page 2, paragraph 1 - Drumm will sell his right to develop to Hanehan a farmer who will use the property to grow corn for his cows)
- c) processing the conservation easement on the parcel of real estate with proper government authorities; (Page 2, paragraphs 2 and 4 – New York State Department of Agriculture and Markets will contribute 75% of the cost; final price is public record) and
- d) exchanging a tax interest in the conservation easement to the intermediate party for consideration less than the value of the tax interest. (Page 2, paragraph 2 – the price for the property would be “the difference between market value that the developers would pay for the land and the farm valuation, which is lower”)

### CONCLUSION

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heidi Riviere whose telephone number is 571-270-1831. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm EST.; Alternative Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on 571-272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Name: Heidi Riviere

Signature: 

Title: Examiner

Date: 

JOHN G. WEISS  
SUPERVISOR PAT. EXAMINER  
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